

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
01 JAN 19 PM 1:01
U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Margaret M. Blakeley

Debtor.

C/A No. 00-09440-W

JUDGMENT

Chapter 7

ENTERED
JAN 23 2001
K.K.M.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Margaret M. Blakeley's Motion to Avoid Judicial Lien is granted and Billie Bryant's judgment lien in the amount of \$10,224.00 is avoided in its entirety. The dischargeability of the underlying indebtedness shall be determined in the adversary proceeding presently pending before this Court.

Columbia, South Carolina,

January 19, 2001.

John E. Waites
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

BNC to:
Richardson

JAN 23 2001

✓ *Simpson* RM ust
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KELLEY MORGAN

Deputy Clerk

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Margaret M. Blakeley

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C/A No. 00-09440-W

ORDER

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THIS MATTER comes before the Court upon the Motion to Avoid Judicial Lien (the "Motion") filed by Margaret M. Blakeley ("Debtor") on December 1, 2000, pursuant to 11 U.S.C. §522(f)(1)(A)¹ on the ground that it impairs the homestead exemption to which Debtor is entitled. On December 19, 2000, Billie Bryant, the creditor whose lien Debtor was seeking to avoid, filed an Objection to Motion to Avoid Judicial Lien on the ground that the lien in question is senior to the mortgage lien of Equicredit Corporation and further asserting that the Motion was filed in bad faith and should be dismissed with prejudice. A hearing on the Motion was first heard before this Court on January 4, 2001, at which time Billie Bryant, through her counsel, argued that the Motion should have been brought by adversary proceeding pursuant to Fed. R. Bankr. P. 7001. The Court overruled the latter objection on the ground that Fed. R. Bankr. P. 4003(d) specifically provides that a proceeding by the debtor to avoid a lien under §522(f) is a contested matter and should be brought by motion in accordance with Fed. R. Bankr. P. 9014. However, in order to avoid prejudice to Billie Bryant, the Court continued the matter over to January 18, 2001 to give the parties time to conduct additional discovery. After considering the pleadings in the matter, the evidence presented at the hearings, and the arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Fed. R. Civ. P.

¹ Further references to the Bankruptcy Code shall be by section number only.

52, made applicable in bankruptcy proceedings by Fed. R. Bankr. P. 7052. ²

FINDINGS OF FACT

1. Debtor filed for relief under Chapter 7 of the Bankruptcy Code on October 19, 2000. On the date of the petition, Debtor owned a house and lot located at 140 Montieth Street, Columbia, South Carolina. Debtor's Schedule A reflects the current market value of Debtor's interest in the property to be \$24,500.00, and no evidence was introduced at the hearing to dispute said value.
2. On October 22, 1997, an Order was entered in the Court of Common Pleas of Richland County and consented to by Debtor and Billie Bryant. The Order reflected Debtor's confession of judgment in the amount of \$7,200.00. Debtor's Schedule D reflects that the balance of the judgment, on the petition date, was \$10,224.00.
3. On October 22, 1997, Debtor became indebted to Equicredit Corporation in the principal amount of \$25,000.00; however, said mortgage was not filed and executed until October 30, 1997. Debtors' schedule D indicates that the balance due to Equicredit Corporation on the note, as of the date of the petition, was in the amount of \$22,942.00.
4. On November 1, 2000, Debtor filed a Motion to Avoid Judicial Lien and, on December 19, 2000, Billie Bryant filed an Objection to the Motion.

CONCLUSIONS OF LAW

Debtor seeks to avoid Billie Bryant's lien pursuant to §522(f)(1)(A). That section

² The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

provides that a debtor may avoid the fixing of a lien in debtor's interest in property "to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is --(A) a judicial lien." Section 101(36) defines "judicial lien" as any "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." Therefore, the Court finds that the lien in question in this case falls within the definition set forth in the Bankruptcy Code. The next question becomes whether the lien impairs an exemption that Debtor is entitled to pursuant to §522(b) and S.C. Code Ann. §15-41-30, and if so, to what extent the exemption is impaired.

One of the issues raised by the parties in connection with the Motion was the priority of Billie Bryant's judgment lien as compared to Equicredit's Mortgage. Debtor cites to Hinson v. Lexington State Bank (In re Hinson), 20 B.R. 753 (Bankr. D.S.C. 1986) for the proposition that Equicredit Corporation's mortgage is senior to Billie Bryant's lien.³ On the other hand, Billie Bryant took the position that her lien was superior to Equicredit's mortgage because it was recorded in the public records prior to the execution and recording of the Mortgage. The Court finds that the priority of the lien and mortgage in this case does not impact the outcome of its decision. The Court has recently addressed the issue of avoidance of judicial liens in the case of In re Freeman, C/A No. 00-07739-W (Bankr. D.S.C. 1/10/2001) and concluded, under similar circumstances, that a senior judicial lien could be avoided despite the fact that there was no

³ In In re Hinson, the court relied on S.C. Code Ann. §30-7-10 which provides that all deed, mortgages and other liens on property "shall be valid so as to affect the rights of subsequent creditors . . . only from the day and hour when they are recorded" and concluded that a mortgagee should have priority over a judgment creditor when "the debts upon which the judgments [are] entered [are] antecedent to the creation of the mortgage obligation." Id. at 757.

equity in the property. *Id.*⁴ However, in this case, the application of the mathematical formula provided in §522(f)(2) to determine the extent a lien impairs an exemption would produce the same result whether the subject lien was determined to be senior or junior to Equicredit's mortgage.

Billie Bryant's lien will be avoided if it impairs Debtor's exemption in the property. Pursuant to §522(f)(2), "a lien is determined to impair an exemption if the sum of the lien in question, all other liens on the property, and the exemption the debtor is entitled to 'exceeds the value that the debtor's interest in the property would have in absence of any liens.'" *In re Freeman*, C/A No. 00-07739-W (Bankr. D.S.C. 1/10/2001); §522(f)(2). When applying the formula to the facts in this case, the calculation results in the following:

Billie Bryant's Lien:	\$10,224.00
Equicredit Mortgage:	\$22,942.00
Debtor's Exemption	\$5,000.00
TOTAL:	\$38,166.00
Value of Property:	\$24,500.00
Amount by which Total Exceeds	\$13,666.00
Value of Property	

Given the fact that the sum of the judgment lien, Equicredit Corporations' mortgage, and Debtor's exemption in the property pursuant to S.C. Code Ann. §15-41-30 exceeds Debtor's

⁴ In the commentary to the Bankruptcy Reform Act of 1994, Congress specified:

The amendment also overruled *In re Simonson*, 758 F.2d 103 (3d Cir. 1985), in which the Third Circuit Court of Appeals held that a judicial lien could not be avoided in a case in which it was senior to a nonavoidable mortgage and the mortgages on the property exceeded the value of the property. The position of the dissent in that case is adopted.

H.R. Rep. No. 835, 103rd Cong., 2d Sess. 52-54 (1994), reprinted in 1994 U.S.C.C.A.N. 3340, 3361-63.

interest in the property by \$13,666.00, Billie Bryant's judgment lien in the amount of \$10,224.00 is avoidable in full pursuant to §522(f)(1)(A).

At the Continued Hearing on the Motion, counsel for Billie Bryant indicated that an adversary proceeding had been filed with the Court to determine the dischargeability of the debt due to Billie Bryant and requested that, if the Court were to conclude that the judgment lien was avoidable, that such decision would not be effective until the disposition of the adversary proceeding.⁵ However, this Court notes that "[m]ost courts hold that the nondischargeability of the underlying debt does not affect the avoidance of a lien that secured that debt." Butler, Bankruptcy Handbook, ¶21.14 at p. 21-21 (1996 & Supp. 1997- 2000) (citing Walters v. United States Nat'l Bank, 879 F.2d 95, 97 (3d Cir. 1989)); see also In re Pratt, C/A No. 96-73679-W (Bankr. D.S.C. 9/14/1996). It is therefore;

ORDERED that Debtor's Motion to Avoid Judicial Lien is granted and that Billie Bryant's lien in the amount of \$10,224.00 should be fully avoided. The dischargeability of the underlying indebtedness shall be determined in the above referenced adversary proceeding.

AND IT IS SO ORDERED.

Columbia, South Carolina,
January 19, 2001.


UNITED STATES BANKRUPTCY JUDGE

⁵ In the Objection to the Motion and at the hearings, the judgment lien creditor also asserted, as an equitable defense to the lien avoidance, that Debtor acted in bad faith and fraudulently by confessing judgment while knowing that she was mortgaging the property on which the judgment would attach and by failing to pay the judgment lien from the net proceeds she received as a result of the mortgage loan. The Court denies the applicability of such a defense in regards to the lien avoidance statute and finds that such equitable defense is more applicable to the related dischargeability action which is presently pending before this Court.

CERTIFICATE OF MAILING

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Deputy Clerk